

# Operating an IRS-Compliant Gymnastics Booster Club

Presented by

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December 3, 2014



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# Why Create a Booster Club?

- In order to qualify for nonprofit status, a **Gymnastics Booster Club** must first prove that it is operating for both an *exempt purpose* and for *exclusively charitable purposes* under Section 501(c) (3) of the *Internal Revenue Code (IRC)*
- Organizations that meet this threshold qualify for exemption from taxation under Section 501(a), which can result in:
  - Positive tax benefits that dramatically increase the amount of money that can be retained by the booster club and contributed to the sport.
  - Increased parent and private sector donations and contributions
  - Generation of tax-exempt fundraising dollars that go farther, and benefit those who need it the most – *the athletes*.



# Booster Club Basics

- **2 step process to establish Booster Club:**
  - An exempt purpose
  - That operates exclusively for charitable purposes
- **Exempt Purpose:**
  - Charitable non-profit purposes
  - For religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.



# Qualified Amateur Sports Organization or Educational

- IRC § 501(j)(2): "Qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition. If such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports (but do not provide facilities or equipment).
- A booster organization may be "educational" if it teaches sports to a youth or is affiliated with an exempt educational organization. Such educational organizations may also provide facilities and equipment; not really applicable to Gymnastics Booster Clubs
  - But beware of "public purpose" requirements, described later
- IRS has final say on how a booster qualifies

# Booster Clubs: Exempt Purpose

- **IRC § 501(j)(1)(B): An organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.**
  - An organization, composed of local amateur gymnasts who primarily play other local clubs, occasionally schedules meets with teams in another state, will not qualify for exemption unless it demonstrates that those meets are part of some national competition – in this case, in furtherance of the J.O. or Elite programs.
  - Similarly, even if it provides a regional meet, the organization will fail the requirements of IRC § 501(j) unless it shows some link to national or international competition. The organization's membership with USA Gymnastics likely provides that link.
- **An organization's assertion that it is a training ground for collegiate, professional, and/or Olympic athletes, absent some evidence of a reasonable probability that the members will participate in national or international competition, would not suffice to cause the organization to meet the requirements for exemption**
  - However, prior participation in national or international competitions would constitute some evidence for favorable consideration if the organization could also show a likelihood that it was in a position to continue to participate.

# IRS Examination Guidelines

- **Review programs, minutes of board meetings, newsletters, fundraising solicitations, etc. to verify that the organization promotes serious competition or training rather than social or recreational activities**
- **Obtain the criteria used by the applicable governing body to determine "amateur" status to determine if the organization's athletes are eligible for national or international competitions. The following factors may be relevant in determining whether an organization fosters national or international competition:**
  - Is the sport the organization supports (USA Gymnastics member club) an event in the Olympic or Pan American Games? Are the athletes the organization supports in the age group from which Olympic quality athletes are usually chosen?
  - Are the athletes of a caliber that makes them serious contenders for the Olympic or Pan American Games?
  - Do the athletes demonstrate a certain level of talent and achievement in order to receive support from the organization?
  - Does the organization provide intensive, daily training, as opposed to sponsoring weekend events that are open to and attract a broad range of competitors?
  - Is the organization devoted to improving the performance of a small group of outstanding athletes or does it emphasize the improvement in the health of the general public?
  - Is the organization (USAGym) a member of the United States Olympic Committee?

# Booster Club Basics: Charitable Purpose Requirement

- The IRS has traditionally recognized 501(c)(3) tax exempt status for booster clubs that are “organized and operated exclusively ... *to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment) ... no part of the net earnings of which inures to the benefit of any private shareholder or individual.*”
- Charitable Purpose: 2 prongs
  - Inurement
  - Private benefit
- It is the IRS’s view that “pay or do not play” arrangements constitute private inurement and confer substantial private benefit by causing the income and assets of the Booster Club to benefit primarily the individual parent-members and their children, rather than the broad class of children as a whole. As one IRS court has observed, “raising money for your own kid is not charity.”

# Booster Clubs: “Inurement” prong

## Inurement:

- **No part of the net earnings of the booster club may inure to the benefit of any private shareholder or individual**
  - A parent run Booster Club must be organized so that it benefits the ***entire class of athletes or participants*** and does not favor certain individuals over others—no “insider” preference is allowed.
  - A Booster Club must ensure that money is not given directly to a participant and/or parents—it must be used to offset cost of participation in program
- No system rewarding parents with booster funds based on time or effort contributed to the Booster Club or its fundraising activities is allowed (IRS calls this cooperative fundraising)
- The requirement that each parent-member of the booster participate in fundraising activities in direct proportion to the benefits they expect to receive causes a direct benefit to flow to these parents
- Cannot Require Contributions Or Participation



# “Inurement” : Permissible Exceptions

- **Directing Funds to Gymnasts Who Qualify for Select Events**
  - A Booster Club is not prohibited from making decisions as to where to apply its funds, if the recipients of Booster Club resources are selected based on:
    - *Objective and nondiscriminatory* criteria such as
      - athletic performance
      - Talent
      - Ability
  - This is actually a common scenario, as Booster Clubs often apply funds to gymnasts who achieve a certain level (e.g., Levels 9 and 10) and who qualify for a national competition (such as the J.O. Western or National Championships), or other Elite or qualifying competitions.
  - In this scenario, applying funds to defray travel expenses for gymnasts who qualify based on competition results, or their talent/skill level and ability, is entirely permissible if such opportunity would be equally available to any other qualifying gymnast at the club using the same objective and nondiscriminatory criteria of athletic performance, talent and ability.

# **“Inurement” : Permissible Exceptions Continued...**

- **Using Booster Club Funds to Collectively Pay for Meet Fees, Uniforms, Coaches Fees is Permissible if Incidental to Primary Purpose**
- **A Booster Club is not prohibited from acting as a conduit or clearinghouse to collect and pay competition costs and coaches’ expenses as long as that is not its primary activity.**
  - The “administrative” activity of assembling funds in a centralized place such as the Booster Club’s bank account, forwarding the meet entry fees to the meet sponsors and paying the coaches’ expenses so that they could accompany the athletes benefits all the athletes equally.
  - It facilitates the ability of the teams and the athletes to participate in competitions.
  - These administrative-type activities are specifically contemplated by Section 501(c)(3) of the *IRC* to include exempt organizations which foster amateur athletic competition.
- **This administrative component must not be the Booster Club’s primary purpose, which must remain fundraising exclusively for charitable purposes.**
- **No tax “write-offs” for funds given to a Booster Club for conduit or clearinghouse activities - Parents, do not write these funds off**

# Booster Clubs: “Private Benefit” prong

- Must take care to avoid benefits flowing directly to a for-profit facility: Benefit to a private gym must be “insubstantial” or the booster won’t be furthering an exempt purpose
- Gym cannot exercise influence over operations of a Booster Club – Stay off the Board
- If the organization purchases any equipment for use at the private facility, if more than insubstantial in nature, the IRS is likely to conclude that a substantial purpose of the organization is supporting a commercial enterprise



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# “Private Benefit” - Continued

- **What is Insubstantial? Balancing Test, Must Be Incidental and Not the Primary Purpose**
- **What is “insubstantial?”** It depends on the magnitude of the private benefit in relations to the public benefit derived from the booster’s activities AND
  - Whether the private benefit is necessary to operate the organization’s exempt purpose
  - Subjective balancing test
    - Any private benefit from a particular activity must be incidental—quantitatively and qualitatively, to the overall exempt purpose to be achieved
    - To be qualitatively incidental: the private benefit must be unintentional and a necessary consequence of the activity being undertaken

# Stay Off the Board

- **Being a Booster Club for a for-profit gym does not disqualify a Booster Club from nonprofit status.**
- **Gym owners, managers, or employees may operate in the role of education and advising for Gymnastics Booster Clubs in the following scenario**
  - (1) **How funds can be used to benefit the whole (gym)**
- **HOWEVER gym owners, manager, and employees CANNOT participate (vote) in how the Booster club money is dispersed.**

# Booster Club Tips To Maintain Charitable Tax Status

- Recipients of booster resources must be selected based on objective and nondiscriminatory criteria (athletic performance and ability is acceptable)
- *All gym members must be allowed to participate in booster activities regardless of parent participation in fundraising*
- Cooperative fundraising must only account for a small amount of the clubs activities and gymnasts/their parents must not exercise control over funds raised for their benefit
- When the club uses a for-profit facility, the Booster Clubs activities must not support the for-profit organization— a Booster Club can't help the gymnastics club make money or save money by making purchases the gymnastics club would otherwise have to make to further its purpose



# Booster Clubs Tips, cont.

- **The linkage of a Booster Club to a for-profit gym does not by itself disqualify a booster from non-profit status**
  - The IRS recognizes that more and more there is significant reliance in the U.S. on the private sector to support competitive athletics gives this type of booster more deference than other types
    - According to a recent Guidestar database search, there are presently almost 12,000 booster clubs in the U.S. that have been established by amateur sports organizations such as gymnastics clubs.
  - But, the IRS will closely scrutinize a booster to satisfy itself that the booster is not actively benefiting a for-profit gym
  - Red flag if gym owners have a substantial amount of control over the booster club

# General Tips for Booster Clubs

- **Keep detailed records that show the nondiscriminatory use of booster resources**
- **Maintain clear boundaries between booster parents and gym ownership—stay off the board**
- **Always gear activities toward the “common good”**
- **Don’t require all parents of team gymnasts to participate in the booster club**



# OPERATING AN IRS-COMPLIANT GYMNASTICS BOOSTER CLUB

BY MARC JACOBS & KEVIN WARREN

Unlike many other countries today, the United States relies heavily on the private sector to support competitive and amateur athletics. According to a recent Guidestar database search, there are presently almost 12,000 booster clubs in the U.S. that have been established by amateur sports organizations such as gymnastics clubs. While some booster clubs do not seek to establish tax exempt, nonprofit status under Section 501(c)(3) of the Internal Revenue Code (IRC), and are organized purely to raise money for their clubs and athletes without regard to potential tax benefits, many boosters seek to qualify for tax exempt status under Section 501(a) of the IRC.

Recognizing the important role booster clubs play for amateur sports organizations, the Internal Revenue Service (IRS) does give them a certain amount of leeway. However, with a high susceptibility to abuse and fraud, the IRS has increased its scrutiny of boosters, making it increasingly difficult to obtain and maintain nonprofit status. Understanding the rules is the key to maintaining a legal nonprofit organization that can provide significant financial support to competitive gymnasts and give parents a way to contribute financially to the sport,

while receiving a tax benefit. The the rules consequences not only for the booster club and its parent members, but for



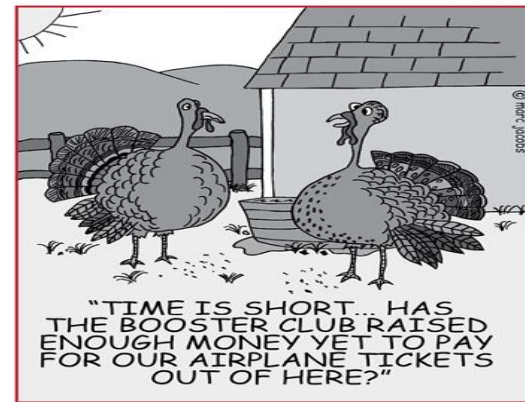
failure to follow can have serious tax consequences not only for the booster club and its parent members, but for the associated gymnastics club as well. Recent Tax Court decisions confirm that the IRS is, indeed, looking at gymnastics booster clubs more closely than ever. That being the case, what can you do to create and maintain a legal nonprofit organization that will withstand IRS scrutiny? This article addresses some current issues regarding boosters and provides important guidelines for a gymnastics booster club to consider so that they are in compliance with the IRS regulations every step of the way.

## OBTAINING TAX EXEMPT STATUS

In order to qualify for nonprofit status, a gymnastics booster club must first prove that it is operating for both an *exempt purpose* and for *exclusively charitable purposes* under Section 501(c)(3) of the IRC. Organizations that meet this threshold qualify for exemption from taxation under Section 501(a), which can result in positive tax benefits that dramatically increase the amount of money that can be retained by the booster and contributed to the sport. The IRS has traditionally recognized 501(c)(3) tax exempt

status for booster clubs that are "organized and operated exclusively ... to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment) ... no part of the net earnings of which inures to the benefit of any private shareholder or individual." Recent Tax Court decisions confirm that gymnastics booster clubs may qualify as a "qualified amateur sports organization" if organized and operated exclusively to conduct national or international competition in sports, or to support or develop amateur athletes for national or international competition (such as the Junior Olympic or Elite training programs). This satisfies the *exempt purpose* prong, although ultimately, the IRS has final say on whether a booster club qualifies for exempt status. The more typical

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problem for a gymnastics booster club arises in connection with the requirement that they operate “exclusively for charitable purposes,” in such a manner that *no part of the net earnings inures to the benefit of any private shareholder or individual*. This is where the IRS pays particularly close attention. In analyzing whether a booster club is observing this requirement, the IRS will look at two key prongs — *inurement* and *private benefit* — to see how the booster club is *actually* operating compared to how it is required to operate under the nonprofit rules. A booster club that qualified initially based on adeptly prepared paperwork may lose tax exempt status if it violates the “exclusively charitable purpose” prong, as the IRS has the authority to revoke tax-exempt status.

**MAINTAINING TAX EXEMPT STATUS — AVOIDING INUREMENT AND PRIVATE BENEFIT PITFALLS**

Maintaining tax exempt status requires adherence to the IRS guidelines and strict compliance with the private inurement and private benefit requirements that the IRS focuses on.

**Private Inurement** — What is private inurement? Inurement occurs

when a booster club’s fundraising efforts benefit individuals, rather than its members as a whole. Parents running booster clubs must organize fundraising distribution in such a manner that no “insider” preference transpires. A booster club violates the IRS’s private inurement prohibitions if its funds are used to benefit individuals, parents or gymnasts who participate in or contribute to the booster club rather than the entire class of participants as a whole, irrespective of the extent of the time, effort or funds they contribute. It is the IRS’s view that “pay or do not play” arrangements constitute private inurement and confer substantial private benefit by causing the income and assets of the booster club to benefit primarily the individual parent-members and their children, rather than the broad class of children as a whole. As one IRS court has observed, “raising money for your own kid is not charity.”

In a recent IRS Tax Court decision, the court analyzed what this type of private inurement might look like. It held that a gymnastics booster club did not meet the tax exempt requirements because its fundraising efforts allowed considerable private inurement and promoted private, non-charitable interests. In that case, each of the families training at the gym paid required annual membership dues to the booster club, operating cost dues, and an assessment each year to cover competition costs. Some parents chose to simply pay the assessment, while others opted to engage in fundraising to satisfy the fee. Fundraising included selling wrapping paper, cookie dough, and scrip (discounted goods and services provided by local businesses to club members, who sell the items for face value.) The club instituted a reward system, whereby parents who chose to raise funds, instead of simply

paying dues outright, earned points in proportion to the amount they raised. This had the effect of conferring a reduction in their overall assessment. The IRS audited the booster club and revoked its tax exempt status, finding that a substantial percent of the fundraising profits were allocated to the children of the parent-members who had raised the money.

The Tax Court, in reviewing these practices, stated: “In so holding, we do not criticize [except in the tax-exemption context] [the club’s] ‘point’ system. Parents who make a serious financial investment in the development of their children’s athletic abilities should be free to arrange that activity in the manner they choose. The arrangement that [the club] developed may well be a rational, wholesome, just, and efficient fundraising method [a proposition as to which we have no jurisdiction to make a declaratory judgment]; but even if so, it does not further a tax-exempt purpose. [The club’s] arrangement reflects instead the purpose of promoting the financial interests of its fundraising members.”

A parent-run booster club must be organized so that it benefits the entire class of gymnasts and does not favor certain individuals over others unless recipients of booster club resources are selected based on *objective* and *nondiscriminatory* criteria such as athletic performance, talent, and ability, not participating in fundraising activities or contributions. A booster club cannot require contributions or participation in exchange for access to booster club resources. Preferential treatment given based on time, effort or funds contributed to the booster club or its fundraising activities is NOT allowed — the IRS calls this cooperative fundraising, and it is prohibited unless the cooperative fundraising accounts for only a small, unintentional

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“APPARENTLY, THE I.R.S. TAKES THIS PRIVATE INUREMENT AND BENEFIT THING MORE SERIOUSLY THAN I THOUGHT.”

and incidental percentage of a booster club's activities.

However, as stated above, a booster club is not prohibited from making decisions as to where to apply its funds, if the recipients of booster club resources are selected based on *objective* and *nondiscriminatory* criteria — such as athletic performance, talent, and ability. This is actually a common scenario, as booster clubs often apply funds to gymnasts who achieve a certain level (e.g., Levels 9 and 10) and who qualify for a national competition (such as the J.O. Western or National Championships), or other Elite or qualifying competitions. In this scenario, applying funds to defray travel expenses for gymnasts who qualify based on their prior competition results, or their talent/ skill level and ability, is entirely permissible if such opportunity would be equally available to any other qualifying gymnast at the club using the same objective and nondiscriminatory criteria of athletic performance, talent and ability. This is in keeping with the requirement that all gym members must be allowed to participate in booster activities and resources regardless of parent participation in fundraising.

Likewise, a booster club is not prohibited from acting as a conduit or clearinghouse to collect and pay competition costs and coaches' expenses as long as that is not its primary activity. The "administrative" activity of assembling funds in a centralized place such as the booster club's bank account, forwarding the meet entry fees to the meet sponsors and paying the coaches' expenses so that they could accompany the athletes

benefits all the athletes equally. It facilitates the ability of the teams and the athletes to participate in competitions. These administrative-type activities are specifically contemplated by Section 501(c) (3) of the IRC to include exempt organizations which foster amateur athletic competition. This administrative component, however, must not be the booster club's primary purpose, which must remain fundraising exclusively for charitable purposes.

**Private Benefit** — This second requirement a booster club must meet to maintain tax-exempt status is similar to the private inurement test, but it relates to private interests outside of the booster club instead of those directly associated with it. In addition to prohibitions against private individuals benefiting from the booster

club activities, so, too, must the gymnastics club take care to avoid benefits flowing directly to it. If it does benefit, the benefit to the gym must be "insubstantial" or the booster club will not be deemed to be furthering an exempt purpose. When dealing with for-profit facilities, a booster club's activities must not support a for-profit organization. Stated differently, a booster club *cannot* help the gymnastics club make money or save money by paying for the club's facilities or equipment. If the benefit is more than *insubstantial* in nature, the IRS is likely to conclude that a substantial purpose of the booster is to support a commercial enterprise, which would defeat the tax exempt purpose of the booster club. Of course, "insubstantial" is a term of art in this context; the IRS will determine whether the private benefit of a particular booster club activity outweighs

the public benefit, or whether it is merely an unintentional consequence of the activity undertaken.

Another factor reviewed by the IRS under the "private benefit" analysis is the question of who has control of the allocation of booster club funds. If the gym owner holds significant sway over the club, it will likely raise red flags. Thus, the gym must not exercise a substantial amount of influence or control over a booster club or direct where the money goes. In other words: owners and managers must *stay off* the booster club board. Obviously, the link between a booster club and a for-profit gym is often symbiotic, and does not, in and of itself, disqualify a booster club from nonprofit status. Being brought in as a consultant or advisor is oftentimes crucial for the success of the booster club, as more than not, it is the gym owner, manager or employee who has the most expertise in gymnastics as this is their profession. Parents, on the other hand, who pass through a gymnastics club for only the finite period of time that their gymnast participates, may have little or no prior experience in gymnastics from an athletic or business standpoint. Thus, as long as a gym owner, manager or employee limits himself or herself to the role of educating and advising booster club board members on issues pertinent to how funds can best be used to benefit the club members as a whole, the booster will be able to avoid running afoul of the private benefit rules.

**WHAT CAN YOU DO TO PROTECT YOURSELF?**

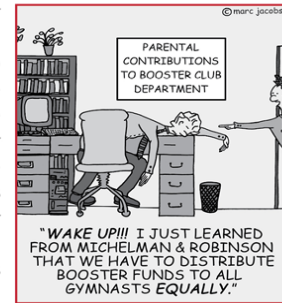
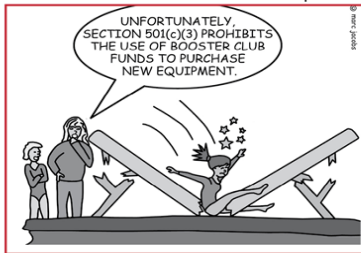
Remaining focused on the threshold purpose of the booster club — exclusively for charitable purposes — is the key to making logical, common sense decisions that meet the IRC requirements. In reviewing your booster club's policies and procedures, ask yourself these questions: Is partic-

ipating in booster club activities required, mandatory or voluntary? Who is benefiting? How are the funds being allocated, and are they being allocated to individual gymnasts and families based on objective, non-discriminatory criteria applicable to all such as athletic performance, talent, and ability? Is the booster club buying equipment for the club, helping the gymnastics facility make money or supporting a commercial enterprise? Asking yourself these questions will help you frame a better picture of what your booster club's activities will look like in the critical eyes of the IRS.

Booster clubs should keep detailed records evidencing the booster club's objective, nondiscriminatory practices. Chief among these records are detailed book-keeping records of all fundraising activities and the use and application of all funds raised by the booster. Maintaining clear boundaries between booster board members and gym owners and managers is key. The booster club should always gear activities and resources toward the "common good" of the club and all of its members, and never require parents of team gymnasts to participate in booster club activities. Likewise, avoid reward systems for parents or members who participate in booster club activities as a measure for receipt of booster club resources. A booster club should never help the private gym club make money; and a booster club should never, above all, allocate resources based on preferential or insider treatment toward participating parents unequally over non-participating parents.

Adherence to these basic guidelines discussed above is the first step for running a successful booster club. If confusion remains, contacting a legal or tax professional is highly recommended. In the end, if run correctly, a tax exempt booster club can achieve great results, including generation of tax-exempt fundraising dollars that go farther, and benefit those who need it the most — the athletes.

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# Thank You

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December 3, 2014



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